IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 964 of 1985
With
FIRST APPEAL No. 965 of 1985
To
FIRST APPEAL No. 968 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHHOTABHAI R MALEK & 2 - Appellant(s)
Versus
GULAMNABI S VORA & 3 - Defendant(s)

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Appearance :
MS ARCHANA ACHARYA for Appellant(s) : 1 - 3.
MS MAYA DESAI for Respondent (s) : 1 - 2.
None for Respondent (s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 01/08/2007

COMMON JUDGMENT

1. Ms.Archana Acharya, learned counsel for the appellants and Ms. Maya Desai, learned counsel for the respondent

Nos.1 and 2. None for the respondent Nos.3 and 4.

2. It is to be noted that the appeals have been admitted against respondent Nos.1 and 2 only.

3. The driver, owner and insurer of the Truck bearing registration No.GTH-6246, being aggrieved by five different awards made by the learned Motor Accident Claims Tribunal (Main), Kheda, are before this Court with a submission that the tribunal was absolutely unjustified in holding the truck driver 100% liable for causing the accident.

4. The claimants had come to the Court with a submission that they were travelling in ST Bus bearing registration No.GTH-5097, at about 6.00 a.m. the bus reached near the intersection of four roads, a truck driven by the present appellant No.1, was proceeding from Tarapur side to Borsad side, the driver was rash and negligent, the truck had hit the rear portion of the ST Bus, the ST bus was thrown off and the claimants suffered injuries. The ST bus was thrown off and dashed with another truck bearing No.GTS-6103.

5. At the very inception, I asked the learned counsel for the appellants as to how four joint appeals on behalf of driver, owner and insurer are maintainable in view of the

judgement of the Apex Court in the matter of **H.S. Ahammed Hussain and another Vs. Irfan Ahammed and another, A.I.R. 2002 S.C. 2483,** learned counsel for the appellants submitted that the name of the appellant No.3 – Insurance Company may be deleted and the matter may be heard for and on behalf of the appellant Nos.1 and 2.

6. It was contended by the learned counsel for the appellants that there was variance between the pleadings / written statement of the driver of the bus and the First Information Report lodged by him. According to the learned counsel for appellants, in the First Information Report, it was mentioned that after seeing a man having head-load, the driver had to stop the bus, while in the written statement, it was contended that when the bus reached the intersection of the road, the bus was to be stopped.

7. Assuming that there was such a variance and contradiction, then, it was the duty of the appellants to confront the bus driver with his earlier statement as recorded in the First Information Report and it was the duty of the appellants to ask for an explanation from the driver.

8. Unless an opportunity is given to a person who is sought to be fixed with his earlier statement, then, the earlier statement cannot be used against him. In any case, the statement of the driver would not assume any importance over and above the statements of the passengers, who had clearly stated a particular fact.

9. Even otherwise, from the facts, it would clearly appear that the offending truck hit the bus at its rear portion, this would mean that the bus, even if, was in motion had crossed half distance or if was stationary, then, the truck could not be controlled and had hit the bus at the rear portion. Taking into consideration the evidence available on the records, I am unable to hold that the bus driver was not negligent or the tribunal was unjustified in exonerating the driver and owner of the ST Bus. No other point was pressed. The appeals are dismissed. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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